

**IN THE COURT OF THE III ADDL. SENIOR CIVIL JUDGE  
AND C.J.M., DHARWAD**

**: PRESENT :**

**Sri.ALLAPPA MAHADEVAPPA BADIGER,**  
B.A., LLB.,(Spl)  
III Addl. Senior Civil Judge & C.J.M.,  
Dharwad

***Dated this 26<sup>th</sup> day of July 2024***

**OS. No.96/2024**

**Plaintiffs :** ..  
Kumari.Shivani D/o Gurayya Baledmath  
and others

**(By Sri.N.B.K., Adv.,)**

**V/s**

**Defendants:** Gurayya S/o Basayya Baledamath and  
others

**(By Sri.I.M.S., Adv, for D.1)**

**(By Sri.B.V.K., Adv., for D.2)**

**(D.3 placed exparte)**

**(By Sri.S.G.H., Adv., for D.5 to 13)**

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**PARTIES TO I.A. No.II**

**Applicant** : Kumari.Shivani D/o Gurayya Baledmath  
plaintiff and others

**V/s**

**Opponents** : Gurayya S/o Basayya Baledamath and  
Defendants others

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**ORDERS ON IA No.II**

This application is filed by the plaintiff under Order XXXIX Rules 1 & 2 r/w Section 151 of CPC, seeking temporary injunction to restrain the defendants No.2 to 13 from alienating the suit schedule property to third parties in any manner till disposal of this suit.

2. In the accompanying affidavit, the plaintiff No.1 has stated that they have filed the case against the defendant No.1 for the relief of partition and separate possession of their respective shares in the suit schedule property and also against the defendants No.2 to 13 as the sale deeds executed by the defendant No.1 in favour of defendant No.2 and also the sale executed by defendant No.2 in favour of defendants No.3 to 12 and so also the sale deed executed by defendant No.3 in favour of defendant No.13 are not binding on their shares. Further submits that the suit schedule property is an ancestral property of plaintiffs No.1 to 3 and defendant No.1, as the defendant No.1 has no absolute right, title over the suit property, has illegally sold the same to defendant No.2. At the time of alienation of the property herself and plaintiffs No.1 and 2 were minors and hence defendant No.1

has no absolute right to alienate the suit property to defendant No.2. Further submits that the defendants No.2 to 13 are trying to alienate the suit property to the third parties. In case if the defendants No.2 to 13 succeeds in their attempts, then the very purpose of filing of the suit will become infructuous and the plaintiffs are once again to knock the doors of justice by filing multifarious suits against the defendants No.2 to 13 and third parties. To avoid such un-happenings, it is just and necessary to issue ad interim temporary injunction against the defendants No.2 to 13 till the disposal of the suit. Hence prayed to allow the application.

3. The defendants appeared but not filed written statement or objection to I.A.No.2.

4. Heard the arguments from plaintiff and perused the material placed on record.

5. The following points arise for my consideration:-

- 1) Whether the plaintiffs prove that there is prima facie case in her favour?

- 2) Whether the plaintiffs prove that balance of convenience lies in her favour?
- 3) Whether the plaintiffs prove that if the temporary injunction is not granted it will cause irreparable loss and injury to her?
- 4) What order?

6. My answer to the above Point are as under:

**Point No.1 to 3** : In the affirmative

**Point No.4** : As per the final order  
for the following

**: R E A S O N S :**

7.**Points No.1 to 3** : These points are interconnected to each other. Hence, to avoid the repetition of fact and discussion these points taken together for common discussion.

8. The plaintiffs have filed the present suit for the relief of partition and declaration seeking their share in the suit schedule property. The plaintiffs have produced documents like record of rights, mutation registers, sale deeds of suit schedule property and sale deeds in the name of defendants no.2 to 13 and earlier the suit schedule property was standing in the name of defendant No.1 and recent RTC

are standing in the name of defendants No.2 to 13. It is contention of plaintiffs that at the time of sale by defendant No.1 in favour of defendant No.2, plaintiffs were minor thereby the defendant No.1 has no absolute right to sell the suit schedule property. It is apprehension of the plaintiffs that the defendants No.2 to 13 are trying to alienate the suit property. If they alienate the suit property, it will cause multiplicity of proceedings and at present plaintiffs are aged about 17 to 21 years. The property is standing in the name of defendants No.2 to 13 and if alienates the suit property it will arise the cause for multiplicity of proceedings and the plaintiffs are seeking their share as the suit property is ancestral property of plaintiffs and defendants. The genealogy shown by the plaintiffs in the plaint shows that the defendant No.1 is the father. More over though defendants appeared have not filed written statement nor objection to I.A.No.2. Therefore, at this stage on perusal of reasons mentioned in the affidavit and the plaint averments as well as documents it shows that plaintiffs have prima facie material for trial. Hence, I am of the opinion that plaintiffs have made out prima facie case and the balance of convenience lies in

favour of plaintiffs because the suit property is standing in the name of defendant No.2 to 13 and it is alleged that they are trying to alienate the suit property. Hence, if the suit property alienates by the defendants the irreparable loss would be caused to the plaintiffs. Hence, I am of the opinion that plaintiffs are entitled for temporary injunction as prayed in the application. Hence, I answer points No.1 to 3 in the affirmative.

**9. Point No. 4:** In view of the above discussion, I proceed to pass the following:

### **ORDER**

*I.A No.II filed by the plaintiffs under Order XXXIX Rules 1 & 2 r/w Section 151 of CPC, is hereby allowed.*

*The defendants No.2 to 13 are hereby restrained by way of temporary injunction from alienating the suit property till disposal of the suit.*

*(Dictated to the Stenographer, computerized by him, corrected and signed by me and then order is pronounced by me in the open court on this 26<sup>th</sup> day of July, 2024)\*

(Allappa.M.Badiger)  
III Addl. Sr. Civil Judge & C.J.M.,  
Dharwad